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CRIMINAL PROCEDURE Bonds and Recognizances: Provide that Certain Persons Arrested Without a Warrant Upon Acts of Family Violence Shall Not Be Eligible for Bail Prior to an Appearance Before a Judicial Officer; Provide for Increased Bail and Specific Conditions for Release for Offenses Involving an Act of Family Violence; Provide for Bail Only Before a Judge in Certain Offenses Involving Family Violence and Serious Injury; Provide a Definition

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CRIMINAL PROCEDURE

Bonds and Recognizances: Provide that Certain Persons Arrested Without a Warrant Upon Acts of Family Violence Shall Not Be Eligible for Bail Prior to an Appearance Before a Judicial Officer; Provide for Increased Bail and Specific Conditions for Release for Offenses Involving an Act of Family Violence; Provide for Bail Only Before a Judge in Certain Offenses Involving Family Violence and Serious Injury; Provide a Definition

CODE SECTION: O.C.G.A. § 17-6-1 (amended)
BILL NUMBER: SB 555
ACT NUMBER: 1186
SUMMARY: The Act requires a law enforcement officer making a warrantless arrest for an act of family violence to bring the accused before a judicial officer for a bond hearing before release. Furthermore, it requires one accused of family violence, when serious injury occurs and there is danger of further violence, to be brought before a judicial officer, who is authorized to impose specific conditions of bail designed to deter further violence. The Act further requires increased bail and special conditions be included in the posted schedule of bails for family violence offenses. Finally, the Act provides a definition of "serious injury."
EFFECTIVE DATE: April 14, 1994

History

Prior to this Act, the Georgia statute concerning family violence acts did not require a judicial officer to conduct a bond hearing when an accused was arrested for a family violence violation which resulted in serious injury.¹ While the prior law did allow the imposition of special conditions,² it did not mandate that a *judge* determine whether a *bond*

1. 1991 Ga. Laws 1401, 1402 (formerly found at O.C.G.A. § 17-6-1(f) (Supp. 1991)).
2. The authorized special conditions included increased bail from the schedule of bails published by the court, "no contact of any kind or character with the victim or any member of the victim's family or household, the immediate enrollment in and participation in domestic violence counseling, substance abuse therapy, or other therapeutic requirements." 1991 Ga. Laws 1401, 1402 (formerly found at O.C.G.A. § 17-6-1 (Supp. 1991)). The new Act preserves these same conditions, but mandates the judge to consider their imposition prior to release on bond. O.C.G.A. § 17-6-1(f)(3) (Supp. 1994).

hearing was necessary to impose these conditions.³ Previously, a judge had the authority to conduct a bond hearing, however, the statute only expressly authorized an arresting officer to determine whether to take the accused before a judge who could impose special conditions.⁴ Because the imposition of special conditions was discretionary, often an arrest would be made and bond posted pursuant to a posted schedule of bails without consideration of whether additional bond requirements were necessary to protect the victim.⁵ Consequently, often the accused, when arrested, merely posted the scheduled bond and was back at home in a matter of hours unless the arresting officer thought the victim needed the additional protection that a judicial officer could provide.⁶ As a result, persons arrested for family violence simply paid a monetary fine and returned home, posing a threat of increased danger to their victims.⁷

SB 555 provides a mechanism whereby the courts and the police can screen family violence violators for the danger of further violence and can better protect victims from further violence.⁸ The sponsor of this bill, Senator Mary Margaret Oliver, stated that this bill received wide support in both chambers, and there was no floor debate on the imposition of stricter bond requirements for family violence offenders.⁹

SB 555

Bail in Family Violence Offenses

Senator Mary Margaret Oliver, Chairman of the Senate Judiciary Committee, originally introduced this portion of SB 555¹⁰ as SB

3. 1991 Ga. Laws 1401, 1402 (formerly found at O.C.G.A. § 17-6-1(f) (Supp. 1991)).

4. *Id.*

5. Telephone Interview with Sen. Mary Margaret Oliver, Senate District No. 42 (Mar. 21, 1994) [hereinafter Oliver Interview]. Sen. Oliver sponsored the bill. *Id.*

6. Telephone Interview with Judge Ron Jayson, DeKalb County Magistrate (Sept. 28, 1994) [hereinafter Jayson Interview].

7. *Id.*

8. *Id.*

9. Oliver Interview, *supra* note 5.

10. SB 555 affects three separate titles of the Code: title 19, Domestic Relations; title 50, State Government; and title 17, Criminal Procedure. Furthermore, SB 555 affects three separate chapters in title 19. This *Peach Sheet* addresses only the change to title 17, chapter 6, Bonds and Recognizances. See *Legislative Review*, 11 GA. ST. U. L. REV 176 (1994) for legislation affecting title 19, chapter 6, Alimony and Child Support Generally and *Legislative Review*, 11 GA. ST. U. L. REV 180 (1994) for legislation affecting title 19, Domestic Relations, chapter 13, Family Violence. No treatment is given to the rest of the Act, which affects the following Code sections: O.C.G.A. §§ 19-7-27, -40 (requiring hospital assistance in establishing paternity and providing for administrative hearings to establish paternity); § 19-11-14 (giving full faith and credit to foreign states' administrative tribunal decisions establishing paternity); § 50-13-13 (empowering administrative agencies with the same procedural

466.¹¹ The Act substantially amends title 17 as it relates to criminal bond procedures connected with family violence violations.¹² First, the Act provides a new subsection, 17-6-1(b)(2)(B), requiring an arresting officer to take the accused before a judicial officer for a bond hearing in all warrantless arrests for acts of family violence.¹³ The provision gives a judicial officer the opportunity to determine if special conditions should be placed on the perpetrator's bail.¹⁴

The Act, while maintaining much of the language in the previous statute, substantially restructures Code section 17-6-1(f), creating new subsections (f)(1)-(3).¹⁵ Subsection (f)(2) requires the judge to increase the amount of bail and to add special conditions to the posted bail schedule for family violence crimes.¹⁶ The special conditions include a restraining order and psychological treatment.¹⁷ Additionally, the Act authorizes the judge to determine whether the various conditions will be imposed.¹⁸

enforcement authority as judicial courts).

11. Oliver Interview, *supra* note 5; *see* SB 466, as introduced, 1994 Ga. Gen. Assem.

12. *Compare* 1991 Ga. Laws 1401, 1402 (formerly found at O.C.G.A. § 17-6-1 (Supp. 1991)) *with* O.C.G.A. § 17-6-1 (Supp. 1994).

13. O.C.G.A. § 17-6-1(b)(2)(B) (Supp. 1994). O.C.G.A. § 19-13-1 defines acts of family violence as follows:

[T]he occurrence of one or more of the following acts between past or present spouses, persons who are parents of the same child, parents and children, stepparents and stepchildren, foster parents and foster children, or other persons living or formerly living in the same household:

- (1) Any felony; or
- (2) Commission of offenses of battery, simple battery, simple assault, assault, stalking, criminal damage to property, unlawful restraint, or criminal trespass.

Id. § 19-13-1 (Supp. 1994).

14. Jayson Interview, *supra* note 6.

15. *Compare* 1991 Ga. Laws 1401, 1402-03 (formerly found at O.C.G.A. § 17-6-1(f) (Supp. 1991)) *with* O.C.G.A. § 17-6-1(f)(1)-(3) (Supp. 1994).

16. O.C.G.A. § 17-6-1(f)(2) (Supp. 1994).

17. *Id.* The Code provides as follows:

For offenses involving an act of family violence, as defined in Code Section 19-13-1, the schedule of bails provided for in paragraph (1) of this subsection shall require increased bail and shall include a listing of specific conditions which shall include, but not be limited to, having no contact of any kind or character with the victim or any member of the victim's family or household, not physically abusing or threatening to physically abuse the victim, the immediate enrollment in and participation in domestic violence counseling, substance abuse therapy, or other therapeutic requirements.

Id.

18. Jayson Interview, *supra* note 6; *see* O.C.G.A. § 17-6-1(f)(3) (Supp. 1994) ("[T]he judge shall determine whether the schedule of bails and one or more of its specific conditions shall be used . . .").

The effect of a special condition, such as prohibiting contact with the victim in addition to a monetary fine, is to give the judicial system a means of protecting a victim from an irate family member recently released from an arrest initiated by that victim.¹⁹

In subsections (f)(2) and (f)(3), the Act makes a clear distinction between the bond requirements for family violence violations which involve serious injuries and those which do not.²⁰ When the arrest is made with a warrant and there is no serious injury, Code section 17-6-1(f)(2) applies.²¹ Under Code section 17-6-1(f)(2), because there is no serious injury and presumably no risk of further injury, a bond hearing will not be required.²² Rather, the accused may post bail according to the schedule which shall include the same special conditions noted above.²³ Presumably, when an arrest is made with a warrant and there is no serious injury, the judge would have previously delineated which special conditions would apply to various kinds of family violence offenses to guide the authorities authorized to use the posted bond schedule without judicial direction on a case-by-case basis.²⁴

In family violence situations involving serious injury when a warrant is issued, the Act provides a means for judicial officers to require a bond hearing.²⁵ The language of the Act is very similar to the prior existing statute, except that the 1994 statute expressly designates a judge to determine whether a bond hearing is necessary.²⁶

While the bill went through substantial restructuring before being passed, few substantive changes were made.²⁷ As introduced, the bill

19. Oliver Interview, *supra* note 5.

20. Compare O.C.G.A. § 17-6-1(f)(2) (Supp. 1994) with *id.* § 17-6-1(f)(3) (Supp. 1994).

21. See *id.* § 17-6-1(f)(2)-(3) (Supp. 1994).

22. Oliver Interview, *supra* note 5.

23. O.C.G.A. § 17-6-1(f)(2) (Supp. 1994). See *supra* note 2 for an inclusive list of special conditions which the judge is authorized to impose.

24. Jayson Interview, *supra* note 6; see also O.C.G.A. § 17-6-1(f)(3) (Supp. 1994) ("For offenses involving an act of family violence, the judge shall determine whether the schedule of bails and one or more of its specific conditions shall be used . . .").

25. O.C.G.A. § 17-6-1(f)(3) (Supp. 1994).

26. Compare 1991 Ga. Laws 1401, 1402 (formerly found at O.C.G.A. 17-6-1(f) (Supp. 1991)) ("[A]ny offense involving an act of family violence . . . and involving serious injury to the victim shall be bailable only before a judicial officer when the *arresting officer* is of the opinion that the danger of further violence to . . . the victim . . . make it desirable . . .") (emphasis added) with O.C.G.A. § 17-6-1(f)(3) (Supp. 1994) ("[A]ny offense involving an act of family violence and serious injury to the victim shall be bailable only before a judge when the *judge or arresting officer* is of the opinion that the danger of further violence to . . . the victim . . . make it desirable . . .") (emphasis added). The drafters of the Act intended to provide judicial discretion in determining whether a bond hearing is necessary while maintaining existing discretion of police officers. Jayson Interview, *supra* note 6.

27. For example, the Senate Judiciary divided subsection (f) into three separate subsections while maintaining the substantive content. Compare SB 555, as

did not provide for a mandatory bond hearing when an arrest was made without a warrant.²⁸ The Senate Judiciary strengthened the bill by requiring that anyone arrested for family violence without a warrant be taken before a judicial officer, who could add special conditions before release.²⁹ According to the bill's sponsor, the change was made in committee without debate.³⁰

As introduced, SB 466 sought to delete the definition of "serious injury" from Code section 17-6-1(f).³¹ However, the Senate Judiciary included the definition of serious injury as it appeared in the previous Code section.³²

The Act had a labored birth and delivery. The Senate Committee substitute version passed on February 7, 1994.³³ The House version, HB 1303 was an exact replica of the Senate version.³⁴ The House Judiciary Committee offered its substitute in a form identical to that of the Senate Judiciary Substitute.³⁵ The House Committee Substitute passed the House on February 1, 1994.³⁶ This substitute was read once in the Senate on February 2, 1994.³⁷ The Senate substitute of SB 446 was read twice in the House on February 8th and 9th and referred to the House Rules Committee.³⁸ However, the House Rules Committee would not report out this or several other bills sponsored by Senator Oliver, hoping to create leverage to force her to report House

introduced, 1994 Ga. Gen. Assem. *with* O.C.G.A. § 17-6-1(f)(1)-(3) (1994).

28. SB 466, as introduced, 1994 Ga. Gen. Assem.

29. SB 466 (SCS), 1994 Ga. Gen. Assem.

30. Oliver Interview, *supra* note 5.

31. SB 466, as introduced, 1994 Ga. Gen. Assem.

32. *Compare* 1991 Ga. Laws 1401, 1402 (formerly found at O.C.G.A. § 17-6-1(f) (Supp. 1991)) *with* SB 466 (SCS), 1994 Ga. Gen. Assem. The Act defines "serious injury" as:

[B]odily harm capable of being perceived by a person other than the victim and may include, but is not limited to, substantially blackened eyes, substantially swollen lips or other facial or body parts, substantial bruises to body parts, fractured bones, or permanent disfigurements and wounds inflicted by deadly weapons or any other objects which, when used offensively against a person, are capable of causing serious bodily injury.

O.C.G.A. § 17-6-1(f)(3) (Supp. 1994).

33. Final Composite Status Sheet, Mar. 16, 1994.

34. *Compare* HB 1303, as introduced, 1994 Ga. Gen. Assem. *with* SB 466, as introduced, 1994 Ga. Gen. Assem. Rep. Tom Cauthorn of the 35th District introduced HB 1303. Oliver Interview, *supra* note 5.

35. *Compare* HB 1303 (HCS), 1994 Ga. Gen. Assem. *with* SB 466 (SCS), 1994 Ga. Gen. Assem.

36. Final Composite Status Sheet, Mar. 16, 1994.

37. *Id.*

38. *Id.* Telephone Interview with Rep. Tom Cauthorn, House District No. 35 (Apr. 1, 1994) [hereinafter Cauthorn Interview].

bills out of the Senate Judiciary, the committee she chairs.³⁹ When a stalemate between the Senate Judiciary Committee and House members developed,⁴⁰ Senator Oliver and Representative Cauthorn agreed that Representative Cauthorn would offer the House Committee substitute of HB 1303 as a floor amendment to SB 555.⁴¹ SB 555, as amended on the House floor by the addition of the House Committee substitute to HB 1303 passed the General Assembly.⁴²

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39. Cauthorn Interview, *supra* note 40.

40. *Id.*

41. The Senate Committee substitute to SB 466 was identical to the House Committee substitute to HB 1303. Compare SB 466 (SCS), 1994 Ga. Gen. Assem. with HB 1303 (HCS), 1994 Ga. Gen. Assem. SB 555 dealt with paternity and the right to hearing in automatic income deduction orders when child support is one month in arrears. See SB 555, as introduced, 1994 Ga. Gen. Assem.

42. Final Composite Status Sheet, Mar. 16, 1994.